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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re:) Chapter 11
)
PG&E CORPORATION,) Case No. 19-30088 (DM)
)
and) (Lead Case)
)
PACIFIC GAS & ELECTRIC COMPANY,) (Jointly Administered)
)
Debtors.)

☐ Affects PG&E Corporation) **CAMPOS EPC LLC'S OBJECTION TO**
☐ Affects Pacific Gas and Electric Company) **NOTICE OF (I) PROPOSED**
☒ Affects both Debtors) **ASSUMPTION OF EXECUTORY**
) **CONTRACTS AND UNEXPIRED**
) **LEASES PURSUANT TO THE**
) **DEBTORS' AND SHAREHOLDER**
) **PROPOSERS' JOINT CHAPTER 11**
) **PLAN OF REORGANIZATION AND**
) **(II) PROPOSED CURE AMOUNTS**
)

Campos EPC LLC ("Campos"), for its Objection to *Notice of (I) Proposed Assumption of Executory Contracts and Unexpired Leases Pursuant to the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization and (II) Proposed Cure Amounts* (this "Objection"), states:

I. BACKGROUND

On January 29, 2019 (the “Petition Date”), PG&E Corporation and Pacific Gas and Electric Company (“PG&E” or the “Debtors”), filed their voluntary petitions under chapter 11 of title 11, U.S.C. (the “Bankruptcy Code”).

The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

Campos is an engineering and construction contractor under certain pre-petition contracts with PG&E, including but not limited to those contracts identified in Schedule G, Dkt. #907-5, pp. 500-503, filed on March 14, 2019, Case No. 19-30088 (amended and restated or otherwise modified or supplemented from time to time) (altogether, the “Campos Contracts”). Under the Campos Contracts, Campos provided engineering, design, and construction services to PG&E’s gas pipelines and related property in various California counties before the Petition Date.

On April 11, 2019, Campos filed its *Notice of Liens Pursuant to § 546(b)*, Dkt. #1351, giving notice of perfection of no less than \$3,273,303.88 in statutory liens.

On April 29, 2019, Campos filed *Amended Proof of Claim #2848*, asserting \$3,273,303.88 as a secured claim, and an additional \$987,467.33 as an unsecured claim, for a total claim of \$4,260,771.21; the Campos proof of claim was further amended and reduced on April 8, 2020 through Claim #98931, in the amount of \$4,028,858.51, consisting of a secured claim of \$3,273,303.88 and an unsecured claim of \$755,554.63 (altogether, the “Campos Claim”).¹

On March 16, 2020, the Debtors filed their *Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020*, Dkt. #6320 (the “Plan”).

On May 1, 2020, the Debtors filed their *Notice of Filing Plan Supplement in Connection with Debtors’ and Shareholder Proponents’ Joint Chapter 11 Plan of Reorganization Dated March 16, 2020*, Dkt. #7037 (the “Plan Supplement”). Exhibit B to the Plan Supplement is the

¹ The Campos Claim was transferred to Citigroup Financial Markets, Inc. (the “Transferee”) on May 13, 2019, Dkt. #1983. Campos is authorized to state that the Transferee has approved this Objection and joins it for all purposes related to the Campos Claim.

1 Debtors' Schedule of Executory Contracts and Unexpired Leases to be Assumed Pursuant to the
2 Plan and Proposed Cure Amounts, Dkt. #7037, pp. 12-1798.

3 The confirmation hearing is currently scheduled for May 27, 2020 (the "Confirmation
4 Hearing").

5 On or about May 12, 2020, Campos received the Debtors' *Notice of (I) Proposed*
6 *Assumption of Executory Contracts and Unexpired Leases Pursuant to the Debtors' and*
7 *Shareholder Proponents' Joint Chapter 11 Plan of Reorganization and (II) Proposed Cure*
8 *Amounts* (the "Cure Notice"), together with an illegible schedule of the four contracts that the
9 Debtors seek to assume as to Campos. Campos subsequently confirmed with Debtors' counsel
10 that the proposed cure amounts served on Campos are identical to those listed in the Plan
11 Supplement, Dkt. #7037, pp. 216-17.

12 The Debtors propose to assume three separate prepetition purchase orders, which arise
13 under Contract Work Authorizations ("CWAs"), and one post-petition "Contract Change Order
14 No. 2," which purports to change a prepetition Master Services Agreement, Contract Number
15 C3452. Copies of the three CWAs are attached as **Exhibit A**.

16 With respect to the three CWAs, the Debtors propose the following cure amounts in the
17 Cure Notice: (1) \$104,887.00 on "Contract ID" #SRCPOS_2700112087; (2) \$229,820.49 on
18 Contract ID #SRCPOS_2700128014; and \$27,439.00 on Contract ID #SRCPOS_2700198816.
19 As reflected in Exhibit A, however, each of those CWAs arises under a main Master Services
20 Agreement, Contract #C3452 ("MSA C3452").

21 Similarly, with respect to post-petition Contract Change Order No. 2, which the Debtors
22 seek assume with zero cure amount identified in the Cure Notice, it too, purports to amend and
23 extend the prepetition MSA C3452. A copy of Contract Change Order No. 2 is attached as
24 **Exhibit B**. Moreover, by its own terms, Contract Change Order No. 2 is premised on the
25 Debtors' assumption of the entire prepetition MSA C3452. *See id.*, ¶ 2 ("[i]n consideration for
26 PG&E agreeing to assume the Contract C3452 . . ."). A copy of MSA C3452 is attached as
27 **Exhibit C**.

1 Although the amounts noted by the Debtors under the three CWAs are correct, they are
2 simply a subset of the total amount due to Campos under MSA C3452 itself, which the Debtors
3 must assume by the express language of Change Order No. 2. Thus, Campos disputes the
4 Debtors' Cure Notice and asserts that the defaults and cure payments necessary to assume MSA
5 C3452 total no less than **\$3,053,924.87**. A summary of those monetary defaults is attached as
6 **Exhibit D**.

7 **II. OBJECTION**

8 The amounts set forth in the Cure Notice and Plan Supplement do not reflect all
9 outstanding balances due and owing to Campos under MSA C3452 as of the Petition Date. The
10 Debtors cannot simply assume the post-petition Change Order No. 2, which by its own terms
11 requires assumption of the prepetition MSA C3452, without assuming all of MSA C3452, and
12 curing all defaults associated with it. It is fundamental that an executory contract must be
13 accepted or rejected in its entirety. *See In re Pacific Express, Inc.*, 780 F.2d 1482, 1488 (9th Cir
14 1986)). The Debtors cannot assume Change Order No. 2 or the CWAs standing alone without
15 curing all defaults under MSA C3452. 11 U.S.C. § 365(b)(1). *N.L.R.B. v. Bildisco & Bildisco*,
16 465 U.S. 513, 531-32 (1984).

17 Although MSA C3452 contemplates that each separate CWA may be terminated by
18 PG&E, the CWAs and MSA C3452 are integrated such that the provisions apply as a whole, even
19 if PG&E elects to cancel work under the CWAs. All of the "Specific Conditions" and "General
20 Conditions" outlined in MSA C3452 apply to each CWA. And the Debtors' payment obligations
21 under MSA C3452 remain, even if the Debtors cancel a CWA. *See* Exhibit C, General
22 Conditions, §§ 15.1 and 15.3.

23 Absent payment of the entire cure amount of no less than \$3,053,924.87 due under MSA
24 C3452, neither the CWAs nor Change Order No. 2 are subject to assumption under § 365 as
25 proposed by the Debtors in the Plan. The Debtors' attempt to disallow any claims based on
26 assumption of portions of contracts without assuming and curing all of the prepetition defaults is
27 likewise overbroad and contrary to § 365. *See* Plan, § 8.2(e); Cure Notice, ¶ 8.

1 WHEREFORE, Campos respectfully requests that the Court: (i) deny the Debtors'
2 proposed assumption of contracts as to Campos EPC LLC, except to the extent that the cure
3 amounts under MSA C3452 are paid in full as set forth herein, and as proven at the Confirmation
4 Hearing, and (ii) grant such further relief as the Court deems proper.

5 Dated: May 15, 2020

BALLARD SPAHR LLP

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7 By: /s/ Brian D. Huben

Brian D. Huben

Theodore J. Hartl

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9 Attorneys for Campos EPC, LLC
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Ballard Spahr LLP, 2029 Century Park East, Suite 800, Los Angeles, California 90067-2909.

On May 15, 2020, I served the foregoing documents described as **CAMPOS EPC LLC'S OBJECTION TO NOTICE OF (I) PROPOSED ASSUMPTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO THE DEBTORS' AND SHAREHOLDER PROPONENTS' JOINT CHAPTER 11 PLAN OF REORGANIZATION AND (II) PROPOSED CURE AMOUNTS** on the interested parties as follows:

☒ **(BY COURT VIA NOTICE OF ELECTRONIC FILING ("NEF"))** Pursuant to Local Bankruptcy Rules ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document to the parties listed on the Electronic Mail Notice List.

☒ **(BY MAIL – See service list below)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day as filing (or within 24 hours of same) with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion upon the party served, that service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in an affidavit.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 15, 2020, at Los Angeles, California.

/s/ Donna Carolo
Donna Carolo